

HOUSE BILL 3771

By Fitzhugh

AN ACT to amend Tennessee Code Annotated, Title 47,
Chapter 18, relative to consumer protection.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. It is the purpose of this act to end the practice of charging a consumer credit or debit card or third party payment account for ongoing shipments of a product or ongoing deliveries of service without a consumer's affirmative express consent.

SECTION 2. Tennessee Code Annotated, Section 47-18-104(b), is amended by adding the following language as a new, appropriately designated subdivision:

() Violating § 47-18-131;

SECTION 3. Tennessee Code Annotated, Title 47, Chapter 18, Part 1, is amended by adding the following language as a new section:

47-18-131.

(a) For the purposes of this section:

(1) "Automatic renewal" means a plan or arrangement in which a paid subscription or purchasing agreement for a product or service is automatically renewed at the end of a definite term for a subsequent term;

(2) "Automatic renewal offer terms" or "continuous service offer terms" means the following disclosures:

(A) That the subscription or purchasing agreement will continue until the consumer cancels;

(B) A description of the cancellation policy that applies to the offer;

(C) The recurring charges, if any, that will be charged to the consumer's credit or debit card or payment account with a third party as part of the automatic renewal or continuous service plan or arrangement; under what circumstances a charge will occur; and that the amount of the charge may change, if that is the case, and the amount to which the charge will change, if known;

(D) The length of the automatic renewal term or that the service is continuous, unless the length of the term is chosen by the consumer; and

(E) The minimum purchase obligation, if any;

(3) "Clear and conspicuous" or "clearly and conspicuously" means in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks, in a manner that clearly calls attention to the language. In the case of an audio disclosure, "clear and conspicuous" and "clearly and conspicuously" means in a volume and cadence sufficient to be readily audible and understandable;

(4) "Continuous service" means a plan or arrangement in which a subscription or purchasing agreement for a product or service continues until the consumer cancels the service; and

(5) "Financial institution" means a bank, trust company, savings institution, or credit union, chartered and supervised under state or federal law.

(b) No person making an automatic renewal or continuous service offer to a consumer in this state shall:

(1) Fail to present automatic renewal offer terms or continuous service offer terms in a clear and conspicuous manner before a subscription or

purchasing agreement is entered into and in visual proximity, or in the case of an offer conveyed by voice, in temporal proximity, to the request for consent to the offer;

(2) Fail to obtain a consumer's affirmative express consent to the automatic renewal offer terms or continuous service offer terms as part of the subscription or purchasing agreement. A consumer's inaction or silence regarding the offer terms shall not constitute affirmative express consent;

(3) Charge a consumer's credit or debit card or a consumer's account with a third party for an automatic renewal or continuous service without first obtaining the consumer's affirmative express consent to the automatic renewal offer terms or continuous service offer terms as provided in subdivision (b)(2); or

(4)

(A) Fail to provide an acknowledgment that includes the automatic renewal or continuous service offer terms, cancellation policy, and information regarding how to cancel in a manner that is capable of being retained by the consumer.

(B) If the offer includes a free trial, then the person shall:

(i) Disclose in the acknowledgment how to cancel; and

(ii) Allow the consumer to cancel before the consumer pays for the goods or services.

(c) A person making automatic renewal or continuous service offers shall provide at least one (1) of the following cancellation mechanisms:

(1) A toll-free telephone number;

(2) An electronic mail address;

(3) If the person directly bills the consumer, a postal address; or

(4) Any other cost-effective, timely, and easy-to-use mechanism for cancellation that shall be described in the acknowledgment required by subdivision (b)(4).

(d) If there is a material change in the terms of the automatic renewal or continuous service offer that has been accepted by a consumer in this state, then the person shall provide the consumer with a clear and conspicuous notice of the material change and provide information regarding how to cancel in a manner that is capable of being retained by the consumer.

(e) The requirements of this section shall apply only prior to the completion of the initial order for the automatic renewal or continuous service, except as follows:

(1) The requirement in subdivision (b)(4) shall be complied with no less than seven (7) days after completion of the initial order; and

(2) The requirement in subsection (d) shall be complied with no less than thirty (30) days prior to implementation of the material change.

(f) Notwithstanding title 47, chapter 18, part 9, if a person sends any goods, wares, merchandise, or products to a consumer, under a continuous service agreement or automatic renewal of a purchase, without first obtaining the consumer's affirmative express consent as described in subsection (b), then the goods, wares, merchandise, or products shall for all purposes be deemed an unconditional gift to the consumer, who may use or dispose of the same in any manner the consumer sees fit without any obligation whatsoever on the consumer's part to the person, including, but not limited to, bearing the cost of, or responsibility for, shipping any of the goods, wares, merchandise, or products to the person.

(g) This section shall not apply to:

(1) Any service provided by a person, or an affiliate of the person, where either the person or affiliate is doing business pursuant to a franchise issued by a political subdivision of this state or a license, franchise, certificate, or other authorization issued by the Tennessee regulatory authority;

(2) Any service provided by a person, or an affiliate of the person, where either the person or affiliate is regulated by the Tennessee regulatory authority, the Federal Communications Commission, or the Federal Energy Regulatory Commission;

(3) Any person regulated by the department of insurance;

(4) An alarm systems contractor, as defined by § 62-32-303; if such contractor is licensed pursuant to title 62, chapter 32, part 3;

(5) A financial institution; or

(6) A service contract seller or service contract administrator regulated by the contractors licensing board pursuant to title 62, chapter 6.

SECTION 4. This act shall take effect January 1, 2013, the public welfare requiring it, and shall apply to offers made, and subscriptions and agreements entered into, on and after such date.